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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,881

08/20/2003

Robert James Vimini

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04/25/2006

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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,881	Applicant(s) VIMINI ET AL.	
	Examiner Adepeju Pearse	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15, 18-28 and 32-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-15, 18-28 and 32-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The use of the trademark "Polynil 66 P-240 HS" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 41-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 41-45 recites the limitation "wherein the single layer" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 13-19, 21-28 and new claims 32-33, 35-36, 39-45 and 47-63 and 65-67 rejected under 35 U.S.C. 102(e) as being anticipated by Berrier et al (U.S. Pub. No. 2004/0121054 A1).

The rejections and references are incorporated as cited in the previous office action.

7. With regard to claim 32, Berrier et al disclose a package comprising a film having a thickness of atleast about 1mils, 1.5mils, 2mils, etc ([0080]).

8. With regard to claim 33, Berrier et al disclose a bag containing a meat product comprising identical films as instantly claimed. In addition, Berrier et al's packaging bag is utilized for the same kinds of meat as instantly claimed. Therefore, it is inherent that the gap between the product and the meat would be within the range recited by applicant because applicant has not claimed a specific range for the size of the bag or the meat product.

9. With regard to claim 35, Berrier et al discloses a package suitable for packaging a food product, it is inherent that the package has a second end; otherwise it would not be a bag. In addition Berrier et al disclose that the bag or pouch may be closed using metal or plastic clip ([0084]).

10. With regard to claim 36, Berrier et al disclose that the film maybe oriented in either the longitudinal or transverse direction or in both directions (i.e. biaxially) ([0082]). It is inherent that the longitudinal or transverse direction is mono axial.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 34, 37-59 and 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al (U.S. Pub. No. 2004/0121054 A1) in view of Barr et al (U.S. Pat. No. 6,422,454) and Hoffman (U.S. Pat. No. 3,454,211). With regard to claim 39, Berrier et al discloses a meat product inside the internal space of a package (0081, lines 5-6). The package comprises an inside film layer which could be one layer or more (0017), lines 1-2). The film layer comprises one or more polymers comprising polyamides such as nylon 66 ((0008) lines 9-11, (0036) lines 1-7). In addition, the package is ovenable and can withstand exposure to temperatures up to 400°C, ((0031, lines 7-10) which is within the applicant's claimed range. The bag is unperforated and heat-sealed such that the package does not have an opening such as failed heat seal region (0084,0087). However, Berrier et al failed to disclose a gap between the product and the bag and the presence of an outer container. Berrier et al's packaging bag is utilized for the same kinds of meat as instantly claimed and also comprises of the same film. Therefore, it would be expected that the gap between the product and the meat would be within the range recited by applicant because applicant has not claimed a specific range for the size of the bag or the meat product. In addition it is well known to utilize outer containers to package food products as evidenced by Barr et al as in claim 34. Barr et al teach a package containing individually packaged pouches or other containers of food items (col 4 lines 15-22). The package bears directions for the consumer (col 4 lines 64-67). It would be obvious to one of ordinary skill in the art to modify Berrier et al with the teachings of Barr et al by incorporating an outer container to hold the meat product in order to improve the ease of preparation for the consumer.

14. With regard to claim 37, Berrier et al disclose that the bag may have a heat-shrinkable attribute (0077). It would be obvious to expect that this attribute is optional and therefore the bag may be free of heat shrink material.

15. With regard to claim 38, Berrier et al disclose that the bag is heat-sealed (0084). It would be obvious to one of ordinary skill in the art to expect that the bag is free of meat adhesion material because it is the bag is sealed to itself.

16. With regard to claim 40, Berrier et al disclose a package consisting essentially of a film ((0083), lines 3-4), which consists of about 100% of one or more polyamides ((0018, lines 7-8). It would be obvious to one of ordinary skill in the art to expect that that the package could consist essentially of nylon 66 because it is disclosed as a suitable polyamide ((0008) lines 9-11).

17. With regard to claim 41, Berrier et al disclose that the package comprises an inside film layer which could be one layer or more ((0017), lines 1-2). The layer may comprise effective amounts of one or more heat stabilizers ((0070), lines 1-3). It would be obvious to one of ordinary skill in the art to expect that the one layer is a single layer as instantly claimed.

18. With regard to claim 42, Berrier et al discloses a polyamide copolymer comprising at least 50% of nylon 66 ((0041), lines 1-5).

19. With regard to claims 43-44, Berrier et al discloses a film comprising one layer ((0017, lines 1-2) comprising of one or more polyamides in a range of at least about 90% and at least 98% ((0018), lines 1-6). It would be obvious to one of ordinary skill in the art to expect that the sole polyamide could be nylon 66 because it is disclosed as a suitable polyamide.

20. With regard to claim 45, Berrier et al discloses a film comprising one layer ((0017, lines 1-2), which consists essentially of one or more polyamides ((0018), lines 7-9). In addition, either

or both layers of the polyamide may comprise effective amounts of one or more heat stabilizers ((0070), lines 1-3). It would be obvious to one of ordinary skill in the art to expect that the polyamide could be nylon 66 because it is disclosed as a suitable polyamide and the layer would be a single layer.

21. With regard to claim 46, Berrier et al failed to disclose a first end having chamfered corners. Hoffman teaches a pouch with curved corners in order to prevent the corners from being accessible to the food product (col 1 lines 41-50). It would be obvious to one of ordinary skill in the art to modify Berrier et al with the teachings of Hoffman and utilize a chamfered edge as instantly claimed because it is seen as a matter of design choice because the bag taught by Hoffman performs the function of keeping the products together away from the corners which would be similar to the function of keeping the meat product intact.

22. With regard to claims 47-49, Berrier et al disclose red meat products, poultry and turkey as meat products ((0092, lines 1-4).

23. With regard to claims 50-51, Berrier et al failed to disclose a marinated meat product or meat product with skin. It would be obvious to one of ordinary skill in the art to expect that the turkey or poultry is with/without skin depending on the taste of the customer and the meat product could be marinated in advance especially since the product is consumed after cooking in the package. It would be necessary to add savory ingredients to enhance the flavor of the meat product, otherwise consumers will not purchase due to bad taste.

24. With regard to claim 52, Berrier et al disclose heat-sealing the film ((0083)).

25. With regard to claim 53, Berrier et al disclose an unperforated package consisting essentially of a film such that the film is the only packaging structure directly adjacent the

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internal space of the unperforated package ((0083, lines 6-9). It would be obvious to one of ordinary skill in the art to expect that the product is free from other packaging because the film is the only packaging structure enclosing the product.

26. With regard to claim 54-55, Berrier et al disclose that the unperforated package may comprise a bag comprising a film ((0083) lines 3-4) having a thickness of at least about 1mils, 1.5mils, 2mils, etc ([0080]).

27. With regard to claim 56, Berrier et al disclose a bag containing a meat product comprising identical films as instantly claimed. In addition, Berrier et al's packaging bag is utilized for the same kinds of meat as instantly claimed. Therefore, it would be obvious to one of ordinary skill in the art to expect that the gap between the product and the meat would be within the range recited by applicant because applicant has not claimed a specific range for the size of the bag or the meat product.

28. With regard to claim 57, Berrier et al disclose that the package is ovenable and can withstand exposure to temperatures up to 400°C, ((0031, lines 7-10) but failed to disclose a bag with directions to cook the meat product. However, Barr et al teach a package containing individually packaged pouches or other containers of food items (col 4 lines 15-22). The package bears directions for the consumer (col 4 lines 64-67). It would be obvious to one of ordinary skill in the art to modify Berrier et al with Barr et al by incorporating direction for cooking on the bag in order to provide ease of use to the consumer.

29. With regard to claim 58, Berrier et al disclose a package suitable for packaging a food product, it would be obvious to one of ordinary skill in the art to expect that the package has a

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second end; otherwise it would not be a bag or package. In addition Berrier et al disclose that the bag or pouch may be closed using metal or plastic clip ([0084]).

30. With regard to claim 59, Berrier et al disclose that the film maybe oriented in either the longitudinal or transverse direction or in both directions (i.e. biaxially) ([0082]). It would be obvious to one of ordinary skill in the art to expect that the longitudinal or transverse direction is mono-axial.

31. With regard to claims 62-63, Berrier et al failed to disclose an outer container. However, Barr et al teach a package containing individually packaged pouches or other containers of food items (see fig. 1, col 4 lines 15-22). It would be obvious to one of ordinary skill in the art to modify Berrier et al with the teachings of Barr et al by utilizing an outer container to package individually packaged pouches of meat product in order to improve ease of transportation.

32. Claims 64 rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al in view of Hoffman (U.S. Pat. No. 3,454,211). Berrier et al disclose a product comprising a poultry product (0092) and a bag. The bag comprising one layer ((0017, lines 1-2) comprising of one or more polyamides in a range of at least about 90% ((0018), lines 1-6). The bag could consist essentially of nylon 66 because it is disclosed as a suitable polyamide ((0008) lines 9-11) and is ovenable and can withstand exposure to temperatures up to 400°C, ((0031, lines 7-10). The bag is utilized for the same kinds of meat as instantly claimed and also comprises of the same film. Therefore, it would be expected that the gap between the product and the meat would be within the range recited by applicant because applicant has not claimed a specific range for the size of the bag or the meat product. The unperforated package may comprise a bag comprising a film

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((0083) lines 3-4) having a thickness of at least about 1mils, 1.5mils, 2mils, etc ([0080]). It would be obvious to one of ordinary skill in the art to expect that the package has a second end; otherwise it would not be a bag or package. In addition Berrier et al disclose that the bag or pouch may be closed using metal or plastic clip ([0084]). However, Berrier et al failed to disclose a first end having chamfered corners. Hoffman teaches a pouch with curved corners in order to prevent the corners from being accessible to the food product (col 1 lines 41-50). It would be obvious to one of ordinary skill in the art to utilize a chamfered edge as instantly claimed because it is seen as a matter of design choice because the bag taught by Hoffman performs the function of keeping the products together away from the corners which would be similar to the function of keeping the meat product intact.

33. Claims 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berrier et al in view of Barr et al. With regard to claim 65, Berrier et al a meat product such as poultry ((0092, lines 1-4) inside the internal space of a package (0081, lines 5-6). The package comprises an inside film layer which could be one layer or more (0017), lines 1-2). The film layer comprises one or more polymers comprising polyamides such as nylon 66 ((0008) lines 9-11, (0036) lines 1-7). In addition, the package is ovenable and can withstand exposure to temperatures up to 400°C, ((0031, lines 7-10) which is within the applicant's claimed range. The bag is unperforated and heat-sealed such that the package does not have an opening such as failed heat seal region (0084,0087). However, Berrier et al failed to disclose a gap between the product and the bag and the presence of an outer container. Berrier et al's packaging bag is utilized for the same kinds of meat as instantly claimed and also comprises of the same film. Therefore, it would be expected that the gap between the product and the meat would be within

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the range recited by applicant because applicant has not claimed a specific range for the size of the bag or the meat product. Berrier et al also disclose that the bag or pouch may be closed using metal or plastic clip ([0084]). In addition it is well known to utilize outer containers to package food products as evidenced by Barr et al. Barr et al teach a package containing individually packaged pouches or other containers of food items (col 4 lines 15-22). The package bears directions for the consumer (col 4 lines 64-67). It would be obvious to one of ordinary skill in the art to modify Berrier et al with the teachings of Barr et al by incorporating an outer container to hold the meat product in order to improve the ease of preparation for the consumer.

34. With regard to claim 66, Berrier et al discloses a film comprising one layer ((0017, lines 1-2) comprising of one or more polyamides in a range of at least about 90% ((0018), lines 1-6). It would be obvious to one of ordinary skill in the art to expect that the sole polyamide could be nylon 66 because it is disclosed as a suitable polyamide.

35. With regard to claim 67, Berrier et al disclose turkey as a meat product ((0092, lines 1-4).

Response to Arguments

36. Applicant's arguments filed 1/30/2006 have been fully considered but they are not persuasive. Applicant argues that Berrier et al disclose a generic teaching of the chemical compound utilized in the bag composition and does not specifically name the specie. However, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros.v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is

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deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” Brown v. 3M, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001)” (see MPEP 2131). In addition, a genus does not always anticipate a claim to a species within the genus. However, when the species is clearly named, the species claim is anticipated no matter how many other species are additionally named. Ex parte A, 17 USPQ2d 1716 (Bd. Pat. App. & Inter.1990). Berrier et al disclose specific species of polyamides including nylon 66 as instantly claimed and positively recites weight percent levels of this chemical compound comprising the bag as instantly claimed. Applicant’s attention is drawn to the previous office action citing the specific location of this recitation in Berrier et al. Berrier et al clearly anticipates the instant invention because it discloses the chemical specie nylon 66 at the weight percents instantly claimed for a cook-in bag as instantly claimed.

Regarding claim 20 requiring chamfered corners, this is seen to be a matter of design choice because the curved corners of Hoffman function to prevent food product from accessing the corners of the bag. This is seen to be the same function of utilizing chamfered corners to keep the food product intact.

Regarding the application of print on the bag material, applicant’s attention is drawn to Barr et al as cited above.

Conclusion

37. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

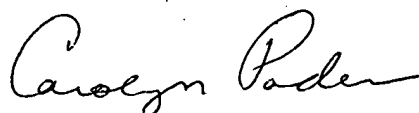
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peju Pearse

CAROLYN PADEN
PRIMARY EXAMINER4-24-06
1761